



National Labor Relations Board

Weekly Summary of NLRB Cases

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ACS, LLC (28-CA-19291; 345 NLRB No. 87) Yuma, AZ Sept. 30, 2005. The Board adopted the administrative law judge's recommendation and dismissed the complaint allegation that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to arbitrate a number of Food and Commercial Workers Local 1096's grievances. [\[HTML\]](#) [\[PDF\]](#)

The parties' collective-bargaining agreement (CBA) has a no-strike, no-lockout provision and requires that all disputes and grievances be resolved under the grievance procedure in the agreement. The CBA includes a two-step formal grievance procedure prior to either arbitration or judicial enforcement.

The Respondent argued that the grievances in dispute are not subject to arbitration under the CBA. It relied on the narrow language of the arbitration clause, which excludes from arbitration disputes "concerning contract interpretation, . . . or matters which involve management decision or business judgment" as well as "[p]rocedural questions of compliance with the contract." The Union argued that its grievances were not excluded by the language of the contract and that the Respondent's conduct is a "wholesale" repudiation of the arbitration procedure.

In dismissing the complaint, the Board wrote: "An employer's refusal to arbitrate grievances, pursuant to a collective-bargaining agreement, violates Section 8(a)(5) of the Act if the employer's conduct amounts to a unilateral modification or wholesale repudiation of the collective-bargaining agreement. We find that, under the circumstances of this case, the Respondent's refusal to arbitrate the grievances at issue here did not constitute a unilateral modification or wholesale repudiation of the contractual arbitration provision and accordingly, did not violate Section 8(a)(5)."

The Board noted that the parties' CBA contains a very narrow arbitration clause, expressly excluding, inter alia, "[d]isputes concerning contract interpretation." It pointed out that as to five of the six grievances at issue, the Union itself initially took the position that the grievances involved contract interpretation. Because of the Union's own characterization of the five grievances as involving contract interpretation and the express exclusion of such disputes from arbitration, the Board found that the Respondent was under no obligation to arbitrate these five grievances. Even assuming *arguendo* that the sixth grievance (drug testing), did not fall under the "contract interpretation" exclusion, the Board reasoned, the Respondent's refusal to arbitrate a single grievance would not amount to a unilateral modification or wholesale repudiation of the arbitration procedure.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Food and Commercial Workers Local 1096; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Yuma, Nov. 16-17, 2004. Adm. Law Judge Thomas M. Patton issued his decision June 6, 2005.

ALJUD Licensed Home Care Services (29-RC-10183; 345 NLRB No. 88) Brooklyn, NY Sept. 30, 2005. Members Liebman and Schaumber affirmed the Regional Director's finding that the representation petition filed by Food and Commercial Workers Local 348S seeking to represent certain employees of ALJUD Licensed Home Care Services was barred by an automatically renewed agreement between the Employer and Industrial, Service, Transport and Health Employees (Intervenor); and dismissed the petition. Chairman Battista, dissenting, would not find a contract bar. [\[HTML\]](#) [\[PDF\]](#)

The Employer and the Intervenor were parties to a 3-year agreement from March 1, 2001 to February 28, 2004. The agreement, which covered the petitioned-for employees, contained an automatic renewal clause. Neither party notified the other of any intent not to renew the contract. Consequently, the contract was renewed for 3 years from March 1, 2004 to February 28, 2007. The Petitioner filed the instant petition on March 25, 2004.

Chairman Battista said he does not question the legality of a contract with a provision for automatic renewal absent notice or the bar quality of such contract to its initial 3-year term. And, if no notice is given, he agrees that the parties are obligated to sign a renewal contract and where they do so, that new contract operates as a bar. However, where, as here, the parties have not signed a renewal contract, there is no document to which a petitioner can turn to determine whether the 2001-2004 contract came to an end or renewed itself, the Chairman reasoned. He wrote: "My only point is that potential petitioners should be able to glean, from the face of the contract, that the contract is a bar. They cannot do so here."

Member Schaumber agreed with Chairman Battista that the Board should use care when finding a contract bar because of its impact on employee choice. Without expressing a view on the Chairman's position, he found it inconsistent with extant Board law.

(Chairman Battista and Members Liebman and Schaumber participated.)

Dish Network Service Corp. (29-CA-26129, et al.; 345 NLRB No. 83) Farmingdale, NY Sept. 30, 2005. The Board set aside the administrative law judge's decision of February 25, 2005, and remanded the proceeding to the chief administrative law judge for reassignment to a different administrative law judge. [\[HTML\]](#) [\[PDF\]](#)

In exceptions, the Respondent asserted that Administrative Law Judge Howard Edelman failed to issue a reasoned decision, as required under Section 102.35(j) of the Board's Rules and Regulations. Specifically, it asserted that the judge acted improperly by utilizing extensive portions of the posthearing briefs filed by the General Counsel and Communications Workers Local 1108, copied verbatim, to provide almost the entire text of his decision. The Respondent argued that this conduct demonstrated that the judge failed to consider or address any arguments made by the Respondent in its own posthearing brief.

The Board found that three aspects of the judge's conduct in copying the parties' posthearing briefs give the appearance of partiality. First, the extent of the judge's copying: its comparison of relevant documents revealed that approximately 90 percent of the judge's decision was copied verbatim from the briefs filed by the General Counsel and the Union. Second, the judge copied verbatim from these briefs both in his factual statement and legal discussion. Third, the judge said early in his decision only that he included portions of the General Counsel's recitation of facts; he did not mention his incorporation of substantial portions of both briefs into his legal discussion and analysis.

In the Board's view, the impression given is that the judge simply adopted, by rote, the views of the General Counsel and the Union and failed to conduct an independent analysis of the case's underlying facts and legal issues. The Board remanded the case to the chief administrative law judge for assignment to a different administrative law judge to dispel the impression of partiality. It did not order a hearing *de novo* because the Respondent did not request a new hearing and review of the record satisfied the Board that the judge conducted the hearing properly.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Communications Workers Local 1108; complaint alleged violation of Section 8(a)(1), (3), (4), and (5). Hearing held June 28-July 1 and Sept. 27-30, 2004. Adm. Law Judge Howard Edelman issued his decision Feb. 25, 2005.

Donaldson Bros. Ready Mix, Inc. (19-CA-26948-1 through -7, et al.; 345 NLRB No. 86) Hamilton, MT Sept. 30, 2005. The Board denied the General Counsel's motion for partial summary judgment and remanded the proceeding to the Regional Director for hearing before an administrative law judge. [\[HTML\]](#) [\[PDF\]](#)

In its earlier decision reported at 341 NLRB No. 124 (2004), the Board ordered the Respondent to make whole employee David Raines for any loss of earnings and other benefits suffered as a result of the Respondent's discriminatory refusal to allow Raines to clock in early for work.

A controversy having arisen over the amount of backpay due Raines under the Board's order, the Regional Director issued a compliance specification and, thereafter, an amended compliance specification and notice of hearing alleging that Raines was due backpay in the amount of 1.25 hours per day during the backpay period, computed on quarterly basis. The 1.25 hours per day represented an average of the time that Raines typically had clocked in early prior to the Respondent's discriminatory prohibition against that practice.

The Respondent's answer to the amended specification disputed the backpay formula, indicating that, at most, Raines may have started working 15 to 20 minutes prior to his shift. In addition, the Respondent denied that backpay for Raines should be measured as overtime. After being advised that its answer failed to meet the requirements of Section 102.56 of the Board's Rules and Regulations, the Respondent filed a modified answer in response to the General Counsel's concerns, stating that Raines is "entitled to backpay consistent with the Board's Order."

After consideration, the Board determined that the Respondent's answers and opposition brief satisfy the requirements of Section 102.56 because they sufficiently state the basis for the Respondent's disagreement with the General Counsel's figures, set forth alternative premises, and furnish appropriate supporting figures. Accordingly, the Board denied the General Counsel's motion.

(Chairman Battista and Members Liebman and Schaumber participated.)

General Counsel filed motion for partial summary judgment July 15, 2005.

Electric By Miller, Inc. (17-CA-22667(E); 345 NLRB No. 84) Grove, OK Sept. 30, 2005. Affirming the administrative law judge's recommendation, the Board denied the Respondent's application for attorney fees and expenses pursuant to the Equal Access to Justice Act (EAJA), Pub. L. 96-481, 94 Stat. 2325, 5 U.S.C. § 504. The Respondent contended that the General Counsel's position in the underlying unfair labor practice proceeding was not substantially justified with regard to the allegations that were withdrawn by an amendment to the complaint prior to the hearing and the complaint allegations that the judge recommended, and the Board agreed, should be dismissed. The Board held, as did the judge, that even assuming the dismissed allegations were a substantial and discrete part of the underlying case, those allegations were substantially justified. [\[HTML\]](#) [\[PDF\]](#)

By letter dated July 25, 2004, alleged discriminatee Travis Jelik informed the General Counsel that he would not testify at the unfair labor practice hearing. Accordingly, the General Counsel amended the complaint by withdrawing three Section 8(a)(1) allegations and paragraph 7 of the complaint which alleged that Jelik had been constructively discharged on Feb. 13, 2004, in violation of Section 8(a)(3) of the Act. The remaining allegations were litigated on Sept. 14, 2004.

In a decision reported at 344 NLRB No. 20 (2005), the Board affirmed the judge's findings that the Respondent violated Section 8(a)(1) by threatening its employees with closure of the business if they selected Electrical Workers IBEW Local 584 as their collective-bargaining representative and falsely announcing closure of the business in order to effectuate the discharge of a prounion employee; and violated Section 8(a)(1) and (3) by discharging John R. Carter because of his union activities. The judge found that the far more serious threats

of closure subsumed any implied threat of futility. The Board approved his recommendation that the complaint allegations that the Respondent discriminatorily revoked the Carter's cell phone privileges, discriminatorily refused to hire Brent Sloan, and unlawfully interrogated employees regarding their union membership and sympathies be dismissed.

(Chairman Battista and Members Liebman and Schaumber participated.)

Adm. Law Judge George Carson II issued his supplemental decision June 2, 2005.

Elevator Constructors Local 91 (34-CC-200; 345 NLRB No. 68) East Hartford, CT Sept. 26, 2005. The administrative law judge concluded, and the Board agreed, that the Respondent violated Section 8(b)(4)(i) and (ii)(B) of the Act by making threats of work stoppages and engaging in work stoppages with an object of forcing or requiring Otis Elevator Co. to cease doing business with Konover Construction Corp.; and violated Section 8(b)(4)(i) and (ii)(A) by making threats of work stoppages and engaging in work stoppages with an object of forcing and requiring Otis Elevator to "re-enter" a hot cargo agreement prohibited by Section 8(e). [\[HTML\]](#) [\[PDF\]](#)

The Board found that the Respondent's exception to the judge's findings of Section 8(b)(4)(i) and (ii)(A) violations did not meet the minimum requirements of Section 102.46(b) of the Board's Rules and Regulations. In agreement with the judge, the Board held that the Respondent, by instructing Otis Elevator's bargaining unit employees who were assigned to the CPTV job not to perform their assigned work, induced and encouraged the employees to strike in violation of Section 8(b)(4)(i)(B).

Member Liebman agreed that the Respondent made threats that are unlawful under Section 8(b)(4)(i)(B). In so finding, she relied on the judge's finding that the Respondent had informed Robert Nelson, Konover's project superintendent, on the first day of the dispute, that the Respondent was not going to allow the Otis Elevator employees it represented to work on elevators at the jobsite because the elevator demolition work had not been performed by elevator union employees. This direct communication with Konover, considered by Member Liebman to be the neutral/secondary employer, makes this case distinguishable from precedent, which Member Liebman finds questionable, where the alleged 8(b)(4)(ii)(B) threats are made only to the primary employer. See *Teamsters Local 247 (Rymco, Inc.)*, 332 NLRB 1230 fn. 2 (2000).

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Otis Elevator Co., Inc.; complaint alleged violation of Section 8(b)(4)(i) and (ii)(A). Hearing at Hartford, Feb. 3, 4, and 7, 2005. Adm. Law Judge Raymond P. Green issued his decision April 13, 2005.

Field Hotel Associates, L.P. d/b/a Holiday Inn-JFK Airport and Field Family Associates, LLC d/b/a Hampton Inn NY-JFK (29-RC-10237, 10238; 345 NLRB No. 73) Jamaica, NY Sept. 29, 2005. In affirming the administrative law judge's recommendations, the Board overruled the Employer's objections to elections held on August 12, and 13, 2004, and certified that a majority of the valid ballots have been cast for New York Hotel & Motel Trades Council (the Petitioner) and that it is the exclusive collective-bargaining representative of the Employer's employees in the appropriate units. The tally of ballots at Holiday Inn-JFK Airport in Case 29-RC-10237 showed 60 votes for and 52 votes against the Petitioner, with 7 challenged ballots, an insufficient number to affect the results. The tally of ballots at Hampton Inn-JFK Airport in Case 29-RC-10238 showed 20 votes for and 17 votes against the Petitioner, with 2 challenged ballots, an insufficient number to affect the results. [\[HTML\]](#) [\[PDF\]](#)

No exceptions having been filed, the Board adopted the judge's recommendation to overrule Employer's Objections 2, portions of 3, 4, portions of 5, and 11.

(Chairman Battista and Members Liebman and Schaumber participated.)

Leading Edge Aviation Services, Inc. (11-CA-19783; 345 NLRB No. 75) Greenville, SC Sept. 29, 2005. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1), (3), and (4) of the Act by failing and refusing to hire Terry Host as a Quality Control inspector (QC inspector) on its second shift. Chairman Battista and Member Schaumber, with Member Liebman dissenting, reversed the judge and found that the Respondent lawfully refused to hire Host for that position on its first shift. [\[HTML\]](#) [\[PDF\]](#)

Craig Arnold, Respondent's director of military programs, interviewed Host who was wearing sunglasses, jeans, and boots. Based on the interview, Arnold concluded that Host was lacking in interpersonal skills based primarily on two factors: (1) Host was "overconfident" in the interview; and (2) Host wore sunglasses during the interview and thus could not make eye contact with Arnold or vice-versa. Arnold found that Host would be better suited for the second shift QC inspector position, where there would be less need for him to "interface" with Lockheed management than on the first shift position, which required a great deal of interaction with Lockheed management.

Based on the Respondent's conclusion that Host's poor interpersonal skills rendered him unsuitable for the first shift position, where such skills were important, the majority determined that the Respondent had met its burden of demonstrating that it would not have hired Host for that position even absent his union and protected activities.

Contrary to her colleagues, Member Liebman would affirm the judge's finding that the Respondent unlawfully refused to hire Host as the QC inspector on the first shift. Member Liebman stated:

The majority relies entirely on discredited testimony to find that the Respondent lawfully refused to hire Terry Host as the QC inspector on its first shift. Without that reliance—obviously inappropriate—there is no basis to reverse the judge's finding of a violation. And even if the evidence were credible, it would not establish that the Respondent would have refused to hire Host on the first shift even absent his protected activity. See *FES*, 331 NLRB 9, 12 (2000), *enfd.* 301 F.3d (3d Cir. 2002).

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Terry Host, an Individual; complaint alleged violation of Section 8(a)(1), (3), and (4). Hearing at Greenville, April 24-25, 2003. Adm. Law Judge Margaret G. Brakebusch issued her decision May 22, 2003.

Long Island Head Start Child Development Services, Inc. (29-CA-26343; 345 NLRB No. 74) Patchogue, NY Sept. 29, 2005. Affirming the administrative law judge's decision, the Board found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing its health insurance carrier and plan on June 1, 2004. [\[HTML\]](#) [\[PDF\]](#)

The Respondent admitted that it changed the carrier and plan but contended that it was permitted to do so because the parties' 1998-2001 collective-bargaining agreement, which automatically renewed for successive 1-year periods, afforded it the sole discretion to modify employee benefit plans and that absent timely written notice to terminate or modify that agreement, it automatically renewed after May 4, 2001.

The Board rejected the Respondent's contentions. It agreed with the judge that the parties' 1998-2001 collective-bargaining agreement expired on May 4, 2001 and that the contractual reservation to the Respondent of sole discretion with respect to health benefits did not survive the expiration of the collective-bargaining agreement. In addition, the Board found that although the parties' negotiations for a successor agreement resulted in a Memorandum of Agreement reached on April 22, 2004, no party contended that the provisions of that agreement privileged the Respondent's unilateral action.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by State, County and Municipal Employees District Council 1707; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Brooklyn on Dec. 21, 2004. Adm. Law Judge D. Barry Morris issued his decision Feb. 22, 2005.

Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland (4-CB-9267; 345 NLRB No. 71) Philadelphia, PA Sept. 27, 2005. The Board adopted the recommendation of the administrative law judge and dismissed the complaint allegations that the Respondent violated Section 8(b)(3) of the Act by failing and refusing to bargain in good faith with Allied Maintenance Technologies. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Allied Maintenance Technologies; complaint alleged violation of Section 8(b)(3). Hearing at Philadelphia, May 24 and 25, 2005. Adm. Law Judge Jane Vandeventer issued her decision May 25, 2005.

American Residential Services of Indiana, Inc., a Subsidiary of the Servicemaster Co., and American Residential Services, a Subsidiary of the Servicemaster Co. d/b/a Modern Heating & Cooling, Inc. (25-CA-26991-1, 26992-1; 345 NLRB No. 72) Indianapolis, IN Sept. 30, 2005. The Board affirmed the administrative law judge's findings that Respondent Modern Heating & Cooling (Modern) violated Section 8(a)(1) of the Act by threatening its employees with job loss if they selected Sheet Metal Workers Local 20 as their collective-bargaining representative; and violated Section 8(a)(3) and (1) by refusing to hire and consider for hire applicants for Installer, Helper, and Duct Cleaner positions because of their union affiliation. [\[HTML\]](#) [\[PDF\]](#)

Chairman Battista and Member Schaumber, with Member Liebman dissenting, reversed the judge's finding that Modern unlawfully refused to hire applicants for available HVAC Service Technician positions. The majority also reversed the judge's finding that Respondent American Residential Services (ARS) violated Section 8(a)(3) and (1) by refusing to hire and consider for hire applicants because of their union affiliation. The alleged discriminatees were apprentices in the Union's 5-year apprenticeship program known as the "Youth-to-Youth Program," which requires the apprentices, usually after the third year of the apprenticeship, to take a leave of absence from their signatory employers to seek employment with nonunion employers. The goal is to organize the nonunion employers from within.

The majority noted that there is little evidence that ARS Operations Manager Brad Jellison harbored any personal hostility to the applicants' organizing activity. Yet, the majority agreed that the General Counsel's evidence was sufficient to shift to the Respondent its rebuttal burden to show that it would not have hired the alleged discriminatees without regard to their union affiliation. Contrary to the judge, the majority found that ARS carried its burden. They concluded that Jellison's detailed testimony established that ARS had a policy of seeking long-term employees. The majority also found that Jellison, applying this policy, would have rejected the Youth-to-Youth applicants because of their short-term availability for employment.

Contrary to her colleagues, Member Liebman wrote that the evidence does not support a finding that ARS had a policy of seeking long-term employees – instead the record compels the conclusion that ARS simply did not have a policy of screening out applicants who appeared unlikely to become long-term employees. She found that ARS failed to establish any credible basis for believing that the Youth-to-Youth applicants were seeking only short-term or temporary employment, and that Jellison did not bother to ask a single Youth-to-Youth applicant about his availability for or commitment to extended employment though Jellison assertedly discussed such matters with former nonunion employees.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Sheet Metal Workers Local 20; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Indianapolis, Dec. 11-14, 2000 and Jan. 29-30, 2001. Adm. Law Judge Karl H. Buschmann issued his decision May 14, 2002.

Nicholas Morrone and Robert M. Verbosky d/b/a Nick and Bob Partners et al. (6-CA-33210; 345 NLRB No. 89) Lemont Furnace, PA Sept. 30, 2005. Chairman Battista and Member Liebman granted the General Counsel's motion for summary judgment and ordered that the Respondents make whole 22 individuals by paying them backpay amounts ranging from \$1,664.10 to \$24,346.00 and by paying contributions from \$510.37 to \$7,685.10 to the Carpenters' Combined Funds on their behalf. Chairman Battista and Member Liebman found it unnecessary to rule on the General Counsel's motion for default judgment. Assuming, without deciding, that the letter filed by the pro se Respondents is a legally sufficient answer under Section 102.56 of the Board's Rules and Regulations to avoid default judgment, they granted the General Counsel's motion for summary judgment because the Respondents failed to raise a genuine issue of material fact warranting a hearing. [\[HTML\]](#) [\[PDF\]](#)

Member Schaumber concurred in granting the General Counsel's motion for summary judgment. He noted that the General Counsel did not represent that before filing the motion he notified the Respondent that its letter in answer to the compliance specification was insufficient and how it was deficient as required by NLRB Casehandling Manual (Part Three) Compliance, Section 10624.2. Member Schaumber wrote: "While the Board follows a more lenient policy in enforcing its rules against pro se litigants and the failure of the General Counsel to make a representation with regard to its compliance with Section 10624.2 gives me pause, the Respondent in its answering letter effectively concedes that it is unable to raise a genuine issue of material fact as to the figures set forth in the compliance specification. With that admission, summary judgment is appropriate."

The Board decision and order in the underlying unfair labor practice proceeding is reported at 340 NLRB 1196 (2003). In that decision, the Board directed the Respondents to make unit employees whole for any loss of wages and other benefits that they suffered as a result

of the unfair labor practices found. On April 30, 2004, the Third Circuit entered a judgment enforcing the Board's Order. Case No. 04-1525.

(Chairman Battista and Members Liebman and Schaumber participated.)

General Counsel filed motion for default judgment and, in the alternative, for summary judgment June 3, 2005.

Operating Engineers Local 1513 (14-CD-1078; 345 NLRB No. 78) Pevely, MO Sept. 29, 2005. The Board determined that employees of Thomas Industrial Coatings, Inc. represented by Painters District Council No. 2 are entitled to perform the operation of the lulls, lifts, and bulldozer at the Highway 70 Blanchette bridge project in St. Charles and St. Louis Counties, Missouri. It reached this determination by relying on the extant agreement between the Painters and the Employer, the Employer's preference, past practice, and assignment, area and industry practice, and economy and efficiency of operations. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Schaumber participated.)

Pulaski Construction Co. (22-CA-25032; 345 NLRB No. 66) Hamilton, NJ Sept. 27, 2005. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish New Jersey Regional Council of Carpenters Local 34018 with information regarding the relationship between Pulaski Construction Co. (PCC), owned by Ronald Pulaski, and Richard A. Pulaski Construction Co., Inc. (RAPC), owned by Ronald's brother, Richard. [\[HTML\]](#) [\[PDF\]](#)

The Respondent was a signatory contractor with the Union. Their collective-bargaining agreement prohibited the Respondent from using nonunion subcontractors and from participating in the formation or operation of double-breasted corporations. The pertinent information requests made by the Union accompanied grievances filed regarding work performed at facilities operated by Care One Corp. At the first job, RAPC performed the work. The Union, viewing RAPC as a signatory contractor, attempted to file a grievance against RAPC for using nonunion carpenters. The Union's effort to take this grievance to arbitration failed because although RAPC had been a party to several oral project agreements with the Union, it had never become a signatory contractor.

On the second Care One job, on which the instant request for information was based, RAPC again did the work on a nonunion basis. At that point, the Union became interested in the relationship between the two Pulaski companies and began an investigation. The Union

suspected PCC could be held responsible under the bargaining agreement for the use of nonunion labor at the second Care One job, and submitted a grievance with the information requests at issue.

The Respondent excepted to the judge's finding that it failed to provide the information in violation of Section 8(a)(5) and (1), arguing that it was unaware of the purpose of the Union's information request. The Board noted the Respondent clearly had notice that the Union was pursuing a grievance and that the reasons for the information request was to assist in clarifying the relationship between PCC and RAPC in order to determine whether the terms of the bargaining agreement applied to the work performed on the later Care One job.

Under the Board precedent in *Contract Flooring Systems*, 344 NLRB No. 117 (2005), requiring that the union need only inform the employer of the reasons for its request, Member Liebman would find that the Respondent violated Section 8(a)(5) and (1) when it failed to provide the information on and after receiving the Union's initial information request. Consistent with their position in *Contract Flooring*, Chairman Battista and Member Schaumber would find the violation occurred on a later date, i.e., when the Respondent still refused to provide the requested information after the Union apprised the Respondent at the hearing of the facts underlying its belief that the two companies were related. This change in the date of the violation however has no effect on the remedy. The Board ordered the Respondent to furnish the Union with the requested information.

The Respondent excepted to the judge's finding that the Union and the Respondent have a Section 9(a) bargaining relationship, claiming that it was a construction industry employer whose bargaining agreement with the Union was governed by Section 8(f) and accordingly, the judge erred by ordering that it furnish information for the period after the contract expired on April 30, 2002. The Board agreed, finding that the parties' relationship was based on Section 8(f), and that the Union has clarified that it was only seeking information applicable to the period covered by the bargaining agreement. The Board modified the judge's remedy to limit the information request to the duration of the contract, from May 1, 2000 to the contract termination date of April 30, 2002.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by New Jersey Regional Council of Carpenters Local 34018; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Newark on July 9, 2002. Adm. Law Judge Margaret M. Kern issued her decision Oct. 18, 2002.

San Manuel Indian Bingo and Casino (31-CA-23673, 23803; 345 NLRB No. 79) Highland, CA Sept. 30, 2005. The Board granted the General Counsel's motion for summary judgment, finding that the Respondent's affirmative defenses are without merit. It concluded that the Respondent violated Section 8(a)(2) and (1) of the Act by rendering aid, assistance, and support

to the Communications Workers (Party in Interest) and denying the Hotel & Restaurant Employees International access to its facility and employees on an equal or equivalent basis with the Communications Workers. [\[HTML\]](#) [\[PDF\]](#)

The Respondent admitted all factually material allegations of the consolidated complaint while maintaining its affirmative defense that the Board lacks jurisdiction. The Respondent contended that the Board cannot exercise jurisdiction over the Respondent because it is owned and operated by a federally recognized Indian tribe within the confines of an Indian reservation pursuant to the terms of the Indian Gaming Regulatory Act; it is not an employer within the National Labor Relations Act (NLRA); and application of the NLRA to the tribe is preempted by the Indian Gaming Regulatory Act.

The General Counsel argued that this issue was previously litigated and decided and that the Respondent's new argument to support its position is untimely, improper, and should be struck. The Board agreed, finding that it would be improper to relitigate the issue of jurisdiction, which it already decided in an earlier decision reported at 341 NLRB No. 138 (2004). There, the Board denied the Respondent's motion to dismiss the complaint for lack of jurisdiction, and affirmatively asserted jurisdiction over the Respondent. In this decision, the Board held that the Respondent has presented no newly discovered and previously unavailable evidence and/or special or changed circumstances that would necessitate reexamination of its decision to assert jurisdiction. Also, the Respondent has not provided any reason why it could not have presented, in support of its motion to dismiss, its argument that the Board lacks jurisdiction because its tribal labor relations ordinance, which is a component of its compact with the State of California, preempts the NLRA pursuant to the Compact Clause of the Constitution. See *Wayne County Neighborhood Legal Services*, 249 NLRB 1260, 1263 (1980).

Member Schaumber dissented from the Board's denial of the Respondent's motion to dismiss in the earlier decision and would find that the Board does not have jurisdiction here. However, he agreed with his colleagues that the Respondent may not relitigate the jurisdiction issue now and, therefore joined in granting the motion for summary judgment.

(Chairman Battista and Members Liebman and Schaumber participated.)

General Counsel filed motion for summary judgment March 22, 2005.

Sea Mar Community Health Centers (19-CA-28595; 345 NLRB No. 69) Seattle, WA Sept. 28, 2005. The Board affirmed the administrative law judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with Office Employees Local 8 over wages for the dental lab technician position. Chairman Battista and Member Schaumber reversed the judge's finding that the Respondent violated Section 8(a)(5) and (1) by failing to give the Union notice and an opportunity to bargain over the decision to close the dental lab and return Jose Cornejo to sterilizing dental equipment. Member Liebman disagreed with her colleagues on this issue. [\[HTML\]](#) [\[PDF\]](#)

In reversing the judge, the majority found that the Respondent was not obligated to bargain over the decision to close the lab or over the effects of that decision. They wrote: “The lab and the lab technician position were created by a person who had no authority to do so, and the lab operated without Respondent’s knowledge and in direct contradiction to its express order. The Respondent’s order to end this rogue operation—once it was discovered—is a core entrepreneurial decision that is not subject to the duty to bargain.”

Dissenting in part, Member Liebman would find that the Respondent violated Section 8(a)(5) and (1) by unilaterally closing the lab and subcontracting the lab work. She said that subcontracting is a mandatory subject of bargaining if it involves the substitution of one group of workers for another to perform the same work and does not constitute a change in the scope, nature, and direction of the enterprise. See *Fibreboard Paper Products Corp. v. NLRB*, 379 U.S. 203 (1964); *Torrington Industries*, 307 NLRB 809 (1992).

Member Liebman joined the majority in finding that the Respondent violated the Act by refusing to bargain over wages for the dental lab technician position but would not limit the remedy to the 6-day period between the Union’s request and the closure of the dental lab. Instead, she would adopt the judge’s recommendation requiring that the Respondent, among others, reinstate the dental lab as it existed prior to the unilateral subcontracting of dental lab work, reinstate Cornejo to his former position as dental lab technician, and bargain with the Union over the wages to be paid to employees working in the dental lab technician position.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Office Employees Local 8; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Seattle, Sept. 24-25, 2003. Adm. Law Judge John J. McCarrick issued his decision Dec. 24, 2003.

Sheet Metal Workers Local 19 (4-CD-1139, et al.; 345 NLRB No. 70) Jamison, PA Sept. 28, 2005. The Board determined that employees of E.P. Donnelly, Inc., and Primco Construction represented by Metropolitan Regional Council of Carpenters, Southeastern Pennsylvania, State of Delaware and Eastern Shore of Maryland are entitled to perform all prefabricated standing seam metal roofing jobs awarded to Donnelly or Primco in the area in which Donnelly and Primco operate and in which the jurisdictions of Carpenters and Sheet Metal Workers Local 19 overlap. In making the award, the Board relied on the factors of collective-bargaining agreements, employer preference and past practice, and economy and efficiency of operations. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Schaumber participated.)

Teamsters Local 917 (29-CE-128; 345 NLRB No. 76) Brooklyn, NY Sept. 30, 2005. The Board, relying on the existence of less severe sanctions, found that the administrative law judge abused his discretion by dismissing the General Counsel's complaint sua sponte as a sanction against Peerless Importers, Inc. for refusing to fully comply with the Respondent's subpoena for certain documents. It reinstated the complaint allegations that the Respondent violated Section 8(e) of the Act by grieving Peerless' failure to use unit employees to perform covered work and remanded the proceeding to the judge for further appropriate action. [\[HTML\]](#) [\[PDF\]](#)

Peerless is engaged in the distribution of alcoholic beverages throughout the New York City Metropolitan area. The Respondent represents a unit of Peerless' drivers and helpers. The parties' collective-bargaining agreement generally requires Peerless to use unit employees to handle shipments to and from its facilities. Peerless purchases alcoholic beverages from supplier Diageo North America Inc. On Oct. 1, 2002, after Peerless became Diageo's exclusive distributor, Peerless and Diageo entered into a distribution agreement governing their exclusive-dealing relationship.

The Respondent served a subpoena on Peerless before the hearing seeking: (1) all documents and any materials that relate to Peerless' use of nonunit personnel to move freight including, but not limited to, any contracts or agreements with Diageo; and (2) all documents relating to meetings or discussions with Diageo concerning the movement of freight. When Peerless refused to furnish an unredacted copy of its Distribution Agreement with Diageo, absent a protective order, the judge dismissed the complaint sua sponte as a sanction for the noncompliance. He closed the hearing without taking any evidence.

Member Schaumber agreed with his colleagues that the judge had a number of options available to him short of dismissal of the complaint. He added his view that the judge's handling of the Charging Party's request for a protective order, particularly his response that "[he] does not do confidentiality orders," does not appear to be the kind of discerned consideration of an issue raised by a party appearing before the Board which one is to expect. Member Schaumber said the judge should have considered the merits of the request since he failed to call a recess to give the parties an opportunity to resolve the Charging Party's confidentiality concern informally.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Peerless Importers, Inc.; complaint alleged violation of Section 8(e). Hearing held March 8, 2005. Adm. Law Judge Raymond P. Green issued his decision March 30, 2005.

Vanguard Fire & Supply Co., Inc. d/b/a Vanguard Fire & Security Systems (7-CA-45823, et al.; 345 NLRB No. 77) Grand Rapids, MI Sept. 30. 2005. The Board upheld the administrative law judge's findings that the Respondent violated Section 8(a)(5) and (1) of the Act by: withdrawing recognition from Plumbers Local 669 based on a petition signed by less than a majority of unit employees; making material, substantial, and significant changes in the implementation of its policies without first notifying and affording the Union an opportunity to bargain about the changes and their effects; and unilaterally conferring wage and vacation accrual rates on certain bargaining unit employees without notifying and affording the Union an opportunity to bargain. [\[HTML\]](#) [\[PDF\]](#)

The Respondent further violated Section 8(a)(5) and (1) by failing to furnish the Union, on request, with relevant and necessary information; setting preconditions to meeting and negotiating with the Union; and canceling the meetings because the Union did not comply with the preconditions unilaterally imposed by the Respondent.

The Respondent admitted that it conditioned meeting upon advance written submission by the Union of a detailed agenda and proposals. The judge found that the Respondent violated Section 8(a)(5) because a bargaining agenda was a nonmandatory subject of bargaining and the Respondent had no right to insist upon an agenda as a precondition to bargaining. The Board agreed, adding, even assuming, *arguendo* that the Respondent had the right to request a bargaining agenda, the Union satisfied that request by sending two detailed letters to the Respondent discussing its bargaining proposal and including an agenda. The Respondent rejected both as unsatisfactory and continued to refuse to bargain with the Union. The Board held that the Respondent's conduct constituted bad-faith bargaining in violation of Section 8(a)(5). Member Schaumber believes that there may be circumstances where a party's insistence on an agenda as a precondition to further bargaining might be appropriate and lawful.

The Respondent admitted that it unilaterally implemented new starting wage and vacation accrual rates for employee Philip Moss on July 8, 2002, but defended its action based on Section 10(b). The initial charge, which contained an allegation regarding unilateral starting wage rates, was filed on January 17, 2003. The Board pointed out that the Union did not become aware of Moss' starting wage rate until mid-Sept. 2002 and his vacation accrual rate until Oct. or Nov. 2002. Because the charge was filed less than 6 months after the Union learned of the Respondent's actions, the Board found the charge timely.

Agreeing with the judge that the Respondent's implementation of its cell phone policy violated Section 8(a)(5), the Board noted that it has held that a change from lax enforcement of a policy to more stringent enforcement is a matter that must be bargained over. Member Schaumber noted that had the evidence established that prior lax administration of the policy was due to administrative error or incompetence, he would find that the Respondent was privileged, without bargaining, to take steps to ensure the extant policy was properly followed.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Plumbers Local 669; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Grand Rapids, March 16-19, 2004. Adm. Law Judge Keltner W. Locke issued his decision Sept. 30, 2004.

Venetian Casino Resort, LLC (28-CA-16000; 345 NLRB No. 82) Las Vegas, NV Sept. 30, 2005. The administrative law judge found, and the Board agreed, that the Respondent violated Section 8(a)(1) of the Act by summoning the Las Vegas Metropolitan Police and requesting that Union demonstrators, who were engaged in a peaceful demonstration, be issued trespass citations and excluded from the sidewalk in front of the Respondent's facility; causing the recording of a trespass message and the playing of the message over a loudspeaker directed to the demonstrators; and informing union business agent Glen Arnodo that he was being placed under citizen's arrest, and the following day contacting the Las Vegas Metropolitan Police to make a report of the incident. [\[HTML\]](#) [\[PDF\]](#)

The issues concern the Respondent's actions on March 1, 1999, in response to a union demonstration on the sidewalk in front of the Respondent's hotel and casino, then under construction. The Respondent argued that the sidewalk was private property. The Union (Local Joint Executive Board of Las Vegas, Culinary Workers Local 226 and Bartenders Local 165) and its supporters claimed that it was public. In non-Board litigation commenced by the Respondent after the demonstration, the courts determined that "the Venetian's sidewalk constitutes a public forum subject to the protections of the First Amendment." *Venetian Casino Retort v. Local Joint Executive Board*, 257 F.3d 937, 948 (9th Cir. 2001), cert. denied 535 U.S. 905 (2002).

The judge found that because the sidewalk was a public forum and the union demonstrators were engaged in protected activity, the Respondent's actions in response to the union demonstration violated Section 8(a)(1). He wrote: "Having been unsuccessful at [obtaining] a 'neutrality agreement,' the Union obviously decided to take its 'labor dispute' directly to prospective employees and to the general public." The judge found that the Union sought to convey to potential employees "that the facility should be operated under a union contract and, that if hired by the Respondent, these new employees should become union members and support the Union." In addition, he found that the Union sought to educate members of the general public about the nature of the Union's dispute with the Respondent.

Members Liebman and Schaumber affirmed the judge's factual findings, his conclusion that the Union's attempt to convey its messages was protected by Section 7, and his ultimate finding that the Respondent's efforts to interfere with the Union's conduct violated Section 8(a)(1). In his separate concurring opinion, Chairman Battista said he has "grave doubts" about the correctness of the judge's legal conclusion that picketing to obtain a neutrality/card check agreement is protected activity. He noted that where, as here, the employer has not hired any employees, it may well be that a neutrality/card check agreement would be unlawful, and/or that picketing for such an agreement is unprotected. The Respondent however does not defend on that basis, the Chairman added. Instead, it defends on the basis that the

sidewalk was its private property, which his colleagues correctly rejected. Thus, the picketing was unquestionably union activity. In these circumstances, Chairman Battista agreed that the interference with the activity violated Section 8(a)(1).

Member Schaumber agreed with Chairman Battista that serious legal issues warranting careful consideration are presented when a union engages in picketing to obtain a neutrality/card check agreement, but he found it unnecessary to reach them in deciding this case because the Respondent has not presented those issues to the Board.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Local Joint Executive Board of Las Vegas, Culinary Workers Local 226 and Bartenders Local 165, a/w Hotel and Restaurant Employees; complaint alleged violation of Section 8(a)(1). Hearing at Las Vegas on April 3, 2003. Adm. Law Judge Gregory Z. Meyerson issued his decision June 12, 2003.

White Electrical Construction, Inc. (10-CA-35116; 345 NLRB No. 90) Fairfield, AL Sept. 30, 2005. Agreeing with the administrative law judge, the Board held that the Respondent, by discharging Stanley Vincent on March 4, 2004, in the mistaken belief that he had engaged in a work stoppage, and then converting his discharge into a final warning because he engaged in protected concerted activity, violated Section 8(a)(1) of the Act. Contrary to the judge, the Board found that the Respondent's discharge of Vincent and nine other night shift electricians on March 7 did not violate Section 8(a)(1). [\[HTML\]](#) [\[PDF\]](#)

The Respondent terminated Vincent and the other night shift electricians assertedly for unsatisfactory work and low productivity on March 6. The General Counsel alleged that the employees were discharged because of their concerted activity—i.e., protesting Vincent's discharge. The judge found no violation under this theory, but he found an 8(a)(1) violation under a different one. He concluded that because the Respondent erroneously believed that Vincent attempted to cause a work stoppage on March 3, it thought that the employees were engaged in a slowdown of work on March 6. Because he found the Respondent's belief was again erroneous, the judge found that the discharges were unlawful under *Burnup & Sims*, 379 U.S. 21 (1961).

The Board noted that the *Burnup & Sims* rationale does not apply, however, when employees are not engaged in protected activity. Thus, an employer does not violate the Act by terminating employees based on a mistaken belief that they engaged in misconduct if their actions did not arise out of any protected activity. See, e.g., *Yuker Construction Co.*, 335 NLRB 1072, 1073 (2001). The Board found that there is no evidence in this case that the night shift employees were engaged in protected activity on March 6 or that the Respondent believed that they were so engaged. Therefore, even if they were innocent of any wrongdoing, the General Counsel cannot prevail because their terminations did not arise from any protected conduct.

Member Schaumber disagreed with his colleagues' order to the extent that it requires Respondent to cease and desist from "[d]iscouraging its employees from engaging in protected activity by discharging, warning, or taking other adverse action against employees who have engaged in such activity and did not engage in serious misconduct during the course of that protected activity." For the reasons he expressed in his partial dissenting opinion in *Detroit Newspapers*, 340 NLRB 1019 (2003), Member Schaumber finds such an order incapable of being complied with without impermissibly chilling lawful conduct. He would revise the order in a manner consistent with the order he suggested in *Detroit Newspapers*.

Chairman Battista and Member Liebman noted that, contrary to Member Schaumber and consistent with Board law, their order simply forbids that which is forbidden by the Act, as interpreted by the Supreme Court. See *Burnup & Sims*, supra. The majority said: "We do not agree that employers, under such an order, will refrain from disciplining employees for misconduct allegedly committed during the course of protected activity. Rather, they will investigate thoroughly and carefully, knowing that an erroneous finding will result in a violation. Given the underlying protected activity involved, we do not believe that a thorough and careful investigation is inconsistent with the Act and its remedial principles."

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Lance James, an Individual; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Birmingham, Oct. 20-21, 2004. Adm. Law Judge Michael A. Marcionese issued his decision March 4, 2005.

Wilshire at Lakewood (17-CA-21564; 345 NLRB No. 80) Kansas City, MO Sept. 30, 2005. Chairman Battista and Member Schaumber, Member Liebman dissenting, reversed the Board's prior finding that registered nurse (RN) Lisa Jochims was not a statutory supervisor within the meaning of Section 2(11) of the Act, and dismissed the complaint allegations that the Respondent's discharge of, and other conduct towards, Jochims for circulating a petition protesting a change in working conditions violated Section 8(a)(1). The majority vacated the original order and issued a new order to reflect the findings in this supplemental decision and to include the appropriate remedial language for the findings that the Respondent violated Section 8(a)(1) by maintaining certain unlawful handbook rules. [\[HTML\]](#) [\[PDF\]](#)

In the earlier decision reported at 343 NLRB No. 23 (2004), the Board found that Jochims was a statutory employee engaged in protected activity when circulating the petition, and accordingly the Respondent's conduct towards Jochims, including her termination, violated Section 8(a)(1). On Oct. 14, 2004, the Respondent filed a petition for review of the Board's Order with the U.S. Court of Appeals for the Eighth Circuit. Subsequently, the Board informed the parties and the court that it had decided, sua sponte, to reconsider its earlier decision and order.

On reconsideration, Chairman Battista and Member Schaumber determined that Jochims' exercise of independent judgment in issuing disciplinary writeups, in sending employees home early and in preparing an employee evaluation, together with her possession of secondary indicia, established that she was a statutory supervisor. Consequently, her conduct was not protected by the Act.

Dissenting, Member Liebman wrote:

The majority's opinion avoids deciding whether Jochims exercised independent judgment to responsibly direct employees and thus need not resolve the issue left open by *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001). To avoid this issue, however, the majority departs from Board precedent governing the supervisory criteria that it does rely on. That step is unwise—as is the majority's sua sponte reversal of the Board's original decision in this case. Accordingly, I dissent.

(Chairman Battista and Members Liebman and Schaumber participated.)

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Stabilus, Inc. (Auto Workers [UAW]) Gastonia, NC September 26, 2005. 11-CA-20386, et al., 11-RC-6567; JD(ATL)-43-05, Judge Michael A. Marcionese.

Grunberg Realty a/k/a Fanny Grunberg and Associates, LLC (SEIU Local 32BJ) New York, NY September 28, 2005. 2-CA-36621; JD(NY)-45-05, Judge Howard Edelman.

Food and Commercial Workers Local 7R (an Individual) Denver, CO September 29, 2005. 27-CB-4697, 27-RD-1160; JD(SF)-68-05, Judge Thomas M. Patton.

NO ANSWER TO COMPLAINT

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the complaint.)

Cola Electric Co., Inc. (Electrical Workers [IBEW] Local 673) (8-CA-35199, 35287-1; 345 NLRB No. 81) Mentor, OH September 30, 2005. [\[HTML\]](#) [\[PDF\]](#)

NO ANSWER TO COMPLIANCE SPECIFICATION

(In the following case, the Board granted the Acting General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the compliance specification.)

Hasbrouck Plastics, Inc. (IUE-CWA Local 81333) (3-CA-25184; 345 NLRB No. 85) Lakeview NY September 30, 2005. [\[HTML\]](#) [\[PDF\]](#)

**LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS
IN REPRESENTATION CASES**

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

DECISION AND CERTIFICATION OF REPRESENTATIVE

Inter-Con Security Systems, Inc., Los Angeles, CA, 21-RC-20520, September 27, 2005
(Chairman Battista and Members Liebman and Schaumber)
Fred Meyer Stores, Inc., Boise, ID, 27-RC-8367, September 30, 2005 (Chairman Battista and
Members Liebman and Schaumber)
Gateway Foundation, Inc., Sheridan, IL, 33-RC-4904, September 30, 2005
(Chairman Battista and Members Liebman and Schaumber)

DECISION AND DIRECTION OF SECOND ELECTION

Greyhound Lines, Inc., Pittsburgh, PA, 6-RD-1553, September 28, 2005 (Chairman Battista and
Members Liebman and Schaumber)

*(In the following cases, the Board adopted Reports of
Regional Directors or Hearing Officers in the absence of exceptions)*

DECISION AND CERTIFICATION OF REPRESENTATIVE

Sierra Chemical Co., Stockton, CA, 32-RD-1484, September 29, 2005 (Chairman Battista and
Members Liebman and Schaumber)

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Penske Truck Leasing Co., LLC, Dayton, OH, 9-RC-17996, September 30, 2005
(Chairman Battista and Members Liebman and Schaumber)

Shop Fresh, LLC, Waterbury, CT, 34-RC-2107, September 30, 2005 (Chairman Battista and
Members Liebman and Schaumber)

***(In the following cases, the Board granted requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)***

WAWA, Inc., Berlin, NJ, 4-RC-20847, September 30, 2005 (Chairman Battista and
Member Schaumber; Member Liebman dissenting) [remanded to Regional
Director for further proceedings]

Matrix Service Industrial Contractors, Inc., Bartlett, IL, 13-UC-389, September 27, 2005
(Chairman Battista and Members Liebman and Schaumber) [remanded to
Regional Director for further appropriate proceedings]

Manuel E. Viera Inc. d/b/a A.V. Thomas Produce Co., Livingston, CA, 32-RC-5301
September 27, 2005 (Chairman Battista and Member Schaumber; Member
Liebman dissenting)

Madison Square Garden, CT, LLC, Hartford, CT, 34-RC-1812, September 27, 2005
(Chairman Battista and Member Schaumber; Member Liebman dissenting)

***(In the following cases, the Board denied requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)***

Freeman Decorating Co., St. Paul, MN, 18-RC-17376, September 27, 2005
(Chairman Battista and Members Liebman and Schaumber)

Five Star Manufacturing, Inc., Crane, MO, 17-RM-849, September 27, 2005
(Chairman Battista and Members Liebman and Schaumber)

Fred Meyer, Fairbanks, AK, 19-RD-3652, September 27, 2005 (Chairman Battista and
Members Liebman and Schaumber)

The House of LaRose, Brecksville, OH, 8-UC-388, September 27, 2005 (Chairman
Battista and Members Liebman and Schaumber)

Miscellaneous Board Orders

**ORDER [granting request for review of Regional Director's decision
and direction of election with respect to whether the work force employed
prior to Local 17U's disclaimer of interest has reasonable
expectation of future employment and denying in all other respects]**

Freeman Decorating Co., Chicago, IL, 18-RC-17359, September 27, 2005
(Chairman Battista and Member Schaumber; Member Liebman dissenting)
